

**From:** Caroline Ahearn/DC/USEPA/US  
**Sent:** 6/19/2012 10:07:59 AM  
**To:** Surace.Nick@epamail.epa.gov  
**CC:**  
**Subject:** Fw: FYI: Summary of Qs and As from HEC June 6 hearing "EPA Enforcement Priorities and Practices"

Please see attached.

----- Original Message -----

**From:** Caroline Ahearn  
**Sent:** 06/07/2012 02:59 PM EDT  
**To:** Steven Chester; Lawrence Starfield  
**Cc:** Bernadette Rappold; Andrew Stewart; Richard Albores; Tim Sullivan  
**Subject:** FYI: Summary of Qs and As from HEC June 6 hearing "EPA Enforcement Priorities and Practices"

Please see the summary below that was prepared by Keith Bartlett of PLCD.

**Summary of the Questions and Answers from June 6, 2012, House Energy and Commerce, Energy and Power Subcommittee, entitled "EPA Enforcement Priorities and Practices."**

**Witnesses:** Dr. Bryan W. **Shaw**, Chairman of the Texas Commission on Environmental Quality (TCEQ); Barry T. **Smitherman**, Chairman, Texas Railroad Commission; Stephen B. **Etsitty**, Executive Director, Navajo Nation Environmental Protection Agency; Allen **Short**, General Manager, Modesto Irrigation District On behalf of the Modesto Irrigation District, M-S-R Public Power Agency, and the Southern California Public Power Authority; Robert J. **Sullivan**, Jr., Chairman, Oklahoma Independent Petroleum Association (OIPA); and Joel **Mintz**, Professor of Law at Nova Southeastern University.

• Many of the witnesses stated that their industry, oil and gas exploration, has been specifically targeted, and that there is a personal bias against them from EPA officials. Robert Sullivan, in response to **Rep. Whitfield's** (R-KY) question asking if such a bias exists, stated "I do think there is a bias, and I think that it comes from the top, President Obama. It is natural to follow."

• Numerous Members and witnesses identified problems that they had with EPA Enforcement efforts, specifically, three cases: 1. Range Resources, 2. Pavilion and 3. Dimock. Mr. Smitherman (Texas RR Commission) discussed his agency's investigation of natural gas in a citizen's well water related to Range Resources. His agency asked EPA Region 6 to delay issuance of the emergency order to Range Resources. However, EPA issued the order and Mr. Armendariz stated that houses could explode if EPA did not take action. Later the order was dropped based on evidence that showed that the natural gas was not from the hydraulic fracturing.

• **Rep. Sullivan** (R-OK), asked Mr. Sullivan (OIPA), what his opinion of EPA enforcement was after he met Regional Administrator Armendariz. He responded that his group's attitude was fearful. He stated that this kind of threat and overreach by EPA into our industry could affect future capital investment.

• **Rep. Waxman** (D-CA), stated that critics of EPA claim that the Armendariz comments provided a rare glimpse into Obama's EPA Administration. He asked Professor Mintz who at EPA makes the decision about which enforcement actions to take? Prof. Mintz responded that decisions are made mostly by career employees, on a case-by-case basis, and that Regional Administrators do not make decisions about who to take enforcement actions against. In addition, Waxman presented charts comparing the amount of civil penalties assessed by Region during the Obama and Bush Administrations, documenting that there has been no increase in penalties assessed by Obama, and no increase in Region 6. **Rep. Waxman** asked Mr. Etsitty, if he was pleased with EPA's enforcement response and assistance to help remediation efforts with uranium mines on Navajo lands. He responded that he was pleased.

• **Rep. Burgess** (R- TX), asked whether Dr. Armendariz did any good with his comments? Mr. Smitherman responded, No, these investigations should be based on science and facts, and it came out that

the evidence shows that the natural gas releases in the Range Resources case were natural. Dr. Shaw responded that TCEQ was the enforcement authority, and there was no need for EPA to step in.

- **Rep. Pompeo** (R - KS): discussed how environmental organizations are raising the alarm on fossil fuel based exploration and extraction, and their slogans related to "Beyond Coal" and "Beyond Oil" and "Beyond Natural Gas." He then stated that this Administration is "beyond common sense, not beyond coal, oil, or natural gas." He referenced how Region 6 has issued citations under the General Duty clause based on infrared cameras and Gas leaks, based on Section 112(r)(1). He asked whether this was a good idea. Mr. Shaw, stated that TCEQ uses the infrared camera as a great tool in Texas. However, The use of infrared cameras is not useful to measure or quantify emissions, just to know that emissions are being released. Mr. Smitherman, answered that the use of infrared cameras to justify a citation is a slippery slope, enforcement should be based on belief and not science. **Rep. Pompeo** stated that he is drafting legislation that would require EPA to define specific clauses under CAA Section 112(r)(1).

- **Rep. Shimkus** (R-IL) asked Prof. Mintz if he had done "stuff" on EPA enforcement related to the cost of compliance before the rule gets promulgated, including court rulings, courts paying off the litigants, as the cost of doing business? Prof. Mintz responded, No, those are regulatory processes.

- **Rep. Olson** (R-Texas): Stated that Armendariz was retained to act as a witness regarding environmental issues before he became Regional Administrator. He asked if the witnesses thought that his previous role as a witness/activist interfered with his ability to objectively act as Region 6 RA? Mr. Smitherman responded that Armendariz seemed unable to transition from his activist role to a regulator who has to balance his responsibilities.

- **Rep. Scalise** (R-LA) discussed his disappointment with Armendariz not showing up. He said that the Committee needs to find out if there was any intimidation by the Administration to prevent his testimony and if there are any records of communication between Armendariz and Administration as to why he decided to not show up at the last minute.

- **Rep. Rush** (D-IL): There is no basis for an inquiry between the White House and Mr. Armendariz. Let's use our resources in a more productive manner. This is insane to determine if the White House has interfered with the witness showing up.

- **Rep. Whitefield** (R-KY) There is no question that he [Armendariz] has poisoned the well regarding enforcement at EPA. We intend to have further discussions with him, but the committee as a whole would decide that.

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"In the end, we will conserve only what we love, we will love only what we understand, and we will understand only what we are taught."